

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Continental Terminals, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9-A of the Tax Law for :  
the Year 1975. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of March, 1982, he served the within notice of Decision by certified mail upon Continental Terminals, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Continental Terminals, Inc.  
611 Smith St.  
Brooklyn, NY 11231

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
5th day of March, 1982.

*James A. Haylund*

*J. J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Continental Terminals, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Franchise Tax under Article 9-A of the Tax Law :  
for the Year 1975 :

State of New York  
County of Albany

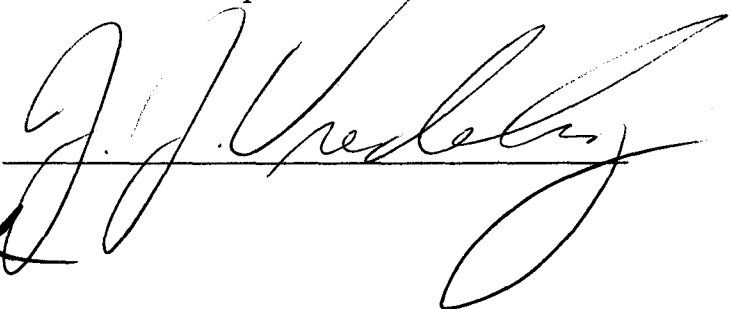
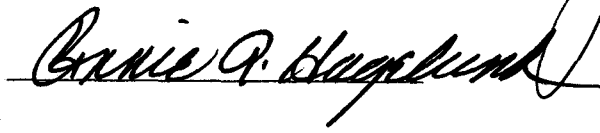
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of March, 1982, he served the within notice of Decision by certified mail upon Eugene L. Stoler the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene L. Stoler  
Stoler, Brayer & Co.  
1500 Broadway  
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
5th day of March, 1982.

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

March 5, 1982

Continental Terminals, Inc.  
611 Smith St.  
Brooklyn, NY 11231

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Eugene L. Stoler  
Stoler, Brayer & Co.  
1500 Broadway  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CONTINENTAL TERMINALS, INC.	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Franchise Tax on Business	:	
Corporations under Article 9-A of the	:	
Tax Law for the Fiscal Year Ending	:	
September 30, 1975.	:	

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Petitioner, Continental Terminals, Inc., 611 Smith Street, Brooklyn, New York 11231, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the fiscal year ending September 30, 1975 (File No. 19764).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 20, 1979 at 9:15 A.M. Petitioner appeared by Eugene L. Stoler. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether machinery for which petitioner claimed an investment tax credit was used in the manufacturing or processing of goods.

FINDINGS OF FACT

1. On March 3, 1977, the Department of Taxation and Finance ("Department") issued a Notice of Deficiency against petitioner, Continental Terminals, Inc., claiming a deficiency of \$991.00 plus penalty and/or interest of \$104.51 totaling \$1,095.51, arising out of the Department's disallowance of an investment tax credit claimed by petitioner on its franchise tax return for the fiscal

year ending September 30, 1975. The stated reason for such disallowance was that the corporation "...is not involved in the production of goods by manufacturing, processing, assembling, etc."

2. The machinery upon which petitioner claimed an investment tax credit comprises a green coffee dump, two bucket elevators, a cleaner/scalper, a feeder bin, a roaster and a scale/sewing machine/conveyor combination.

3. Petitioner receives from the owner/importer thereof, green coffee beans in a moldy, water damaged condition. Coffee beans in the form thus received are deemed impure by the Pure Food and Drug Administration and are unfit for delivery to commercial roasters and blenders.

4. Petitioner's machinery accepts a quantity of green, moldy coffee beans and (a) cleanses it so as to remove foreign matter such as sticks, dust, bugs and string, (b) scalps it so as to grade it to uniform size, thus removing cracked or rotten beans, (c) moistens it so as to soften the mold existing thereon, (d) agitates it to remove the mold, (e) lightly roasts it into brown beans so as to prevent mold reformation, and (f) weighs, re-bags and marks it for identification purposes.

5. After petitioner's machinery has operated upon it, the coffee is in clean, semi-roasted form, entitling it to be released by the Pure Food and Drug Administration, thereby making possible its delivery to commercial roasters and blenders.

#### CONCLUSIONS OF LAW

A. That section 210.12(b) of the Tax Law provides, in part, as follows:

"(b) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the

internal revenue code, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing."

B. That it is noted that 20 NYCRR 527.4(d) (a sales and use tax regulation effective September 1, 1976) defines processing as follows:

"(d) Processing. Processing is the performance of any service on tangible personal property for the owner which effects a change in the nature, shape, or form of the property."

C. That the machinery at issue is principally used by petitioner in the production of goods by processing; therefore, since the machinery has apparently been conceded by the Department to meet the other requirements of section 210.12(b) of the Tax Law, petitioner is entitled to the investment tax credit claimed. Matter of Worcester Creameries Corp., State Tax Commission, August 14, 1975, upon which the Department relies, is distinguishable. In Worcester the taxpayer (1) purchased raw milk, (2) weighed it for butterfat content, (3) tested it for bacterial count, (4) cooled it, (5) agitated and stored it to prevent the natural rising of the butter fat and (6) sold it to producers of pasteurized milk, cream and other products. The taxpayer in Worcester did not change the form or nature of the milk, but merely stored and maintained it in the form received, thereby acting as an intermediary between the source of raw material and the actual producer.

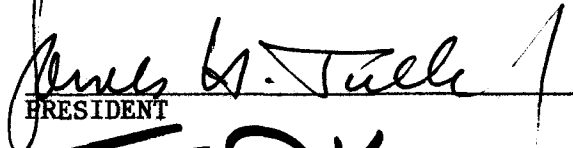
In contrast to Worcester, petitioner effectuates a change in the nature and form of raw materials for the owner thereof. Whether further processing may subsequently be performed does not alter the fact that the taxpayer's services also constitute processing within the meaning of section 210.12(b) of the Tax Law.


D. That the petition of Continental Terminals, Inc. is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York

MAR 05 1982

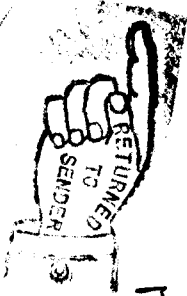
STATE TAX COMMISSION

  
PRESIDENT

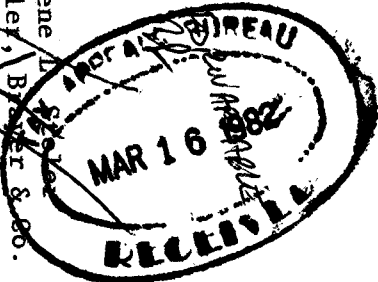
  
COMMISSIONER

  
COMMISSIONER

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STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



3/18/82  
Housed not



Eugene L. Stoler  
Stoler, Bremer & Co.  
1500 Broadway  
New York, NY 10036

REF  
COPIES

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

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## STATE TAX COMMISSION

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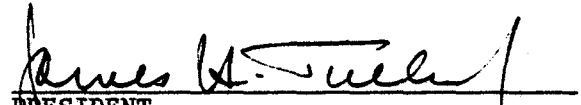
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